

Death penalty, women safety: 7 years on, Nirbhaya gang-rape raises uncomfortable questions

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Women from various walks of life taking out protest marches in Kolkata over the rape and murder of a veterinary doctor in Hyderabad | Salil Bera

<https://www.theweek.in/.../india/2019/12/16/death-penalty-women-safety-7-years-on-nirbhaya-gangrape-raises-uncomfortable-questions.html>[1/14/2020 9:34:18 AM]

but then the rest of them brought an iron rod and hit me. Before I fell unconscious, they took my friend away."

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"From where we boarded the bus, they moved around for nearly two and a half hours. We were shouting, trying to make people hear us. But they switched the lights of the bus off. We tried to resist them. Even my friend fought with them, she tried to save me. She tried to dial the police control room no 100, but the accused snatched her mobile away."

The two were later thrown out of the bus. Nirbhaya was later taken by a police patrol to a government hospital, where she battled for life for several days before being flown to Singapore in an air ambulance for specialised treatment. She passed away on December 29. [The horrendous crime—and the details of the inhuman rape and assault that Nirbhaya was subjected to, so much so that her insides came spilling out—led to widespread public protests in several parts of the country and vocal demands for toughening laws](#)

[against rape.](#)

But, seven years on, after the Hyderabad veterinarian rape and murder, and the public outcry that followed, what has changed for women? Apart from knee jerk reflexes have addressed the actual issues?

Death penalty

[Death penalty is in focus in India with a plea in the Supreme Court by one of the four death-row convicts in the Nirbhaya gang-rape-and-murder case, seeking review of the court's 2017 judgement awarding him the capital punishment.](#) Vinay Sharma is one of the four men along with Mukesh Singh, Pawan Gupta and Akshay Kumar Singh awaiting execution in the case that made global headlines and galvanised a movement for change in the country's rape laws. Of the other two convicted in the case, Ram Singh allegedly committed suicide in Tihar Jail in 2015 and the sixth, a juvenile, was sentenced three years of punishment in a reform home and released in 2015.

However, rights organisations have vehemently opposed the death penalty, with the Amnesty International asserting that it is the "ultimate cruel, inhuman and degrading punishment".

Senior advocate Rebecca John, who describes herself as a "staunch opponent" of the death penalty, said she could not help but notice the judicial system's "difference in approach" in the Delhi case

and that of a pregnant Bilkis Bano, who was gang-raped in the Post-Godhra violence of 2002.

"What were the mitigating circumstances there? In Bilkis's case, she lost a baby girl. Her head was crushed with a stone. I find it very disturbing that offences committed in other contexts, which are equally brutal, are treated differently," she told PTI.

[The 50 countries that still allow death penalty include India, Afghanistan, Pakistan, Nigeria, the US, Iran, Japan, Kuwait, Bangladesh, Iraq, Indonesia and the UAE](#), according to information in public domain. The US-based Death Penalty Information Center, a non-profit organization, states that there are 146 countries that have totally abolished it in law and practice. India executes criminals only in extreme cases and only 26 executions have taken place in India since 1991, the last being 1993 bomb blast case convict Yakub Memon in 2015. Before that, India had executed 2001 Indian Parliament attack Afzal Guru.

Activists hold that a death sentence also indicates a class, caste or religious bias. The Death Penalty India Report prepared by the National Law University (NLU)—Delhi, released, observed that nearly two-thirds of people on the death row belonged to the backward classes, religious minorities or were dalits and adivasis. "We should closely look at the class of people who get the death penalty. It is a middle class mentality that if you do away with a certain class of people, crime will come down," Enakshi Ganguly, who runs the HAQ Centre for Child Rights, said.

John said the NLU study showed that people who were sentenced to death were not defended adequately in lower courts and by the time they were given good legal support in the higher courts, the damage was done. John and Ganguly stressed that the real deterrence to crime would come from a quick and robust prosecution. That will serve the ends of justice, John said. Amnesty International India's senior campaigner Gopika Bashi said what was needed was far-reaching "procedural and institutional" reform and called for the implementation of recommendations made by the Justice Verma Committee, which suggested quicker trials and enhanced punishment for criminals committing sexual assaults. Bashi said there was need for police training and reform, preventive measures and changing the way reports of sexual violence were registered and investigated. "These measures will take effort and time, but will be more effective in the long run in making India safer for women," she said.

Legal response

A week after the horrific attack on Nirbhaya, the Justice J.S. Verma Committee was set up to review the criminal laws to sternly deal with sexual assault cases. The Committee's report, which was published within a month, formed the basis of the Criminal Law (Amendment) Act of 2013 to set the maximum punishment for rape as death penalty rather than life imprisonment. On February 3, 2013, the Criminal Law (Amendment) Ordinance, 2013 was promulgated by then President Pranab Mukherjee. It provides for amendment of the Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973, on laws related to sexual offences. The ordinance provides for the death penalty in cases of rape.

The Juvenile Justice (Care and Protection of Children) Act, 2015 was also passed by Parliament,

allowing for juveniles in conflict with law in the age group of 16-18, involved in heinous offences, to be tried as adults.

But, despite all these, numbers do not paint an encouraging picture. The recently released 2017 NCRB report details crimes against women. [The conviction rate for murder with rape or gang-rape is 57.9 per cent and for rape it is 32.2 per cent, as per the NCRB. 32,599 cases of rape were registered with the police in 2017;](#) Only about 18,300 cases were disposed, leaving more than 127,800 cases pending at the end of 2017, Reuters reported. Uttar Pradesh accounted for 15.6 per cent of all the crimes against women reported in the country under the Indian Penal Code as well as those reported under special laws.

This translates into a crime rate of 53.2 per cent (number of crimes reported/population). Of the 3.4 lakh crimes against women reported in the country, 56,000 came from Uttar Pradesh. Majority of cases under crimes against women were registered under 'Cruelty by Husband or his Relatives' (27.9 per cent) followed by 'Assault on Women with Intent to Outrage her Modesty' (21.7 per cent), 'Kidnapping & Abduction of Women' (20.5%) and 'Rape' (7.0 per cent). A total of 3,59,849 cases were reported against women in 2017.

The total number of rape cases that went to trial in that year was 1,46,201 but only 5,822 of them resulted in conviction. What is perhaps more worrisome is that while the conviction rate in rape cases has increased marginally in recent years, the charge-sheeting rate has gone down—which means cases are not going to court. The charge-sheeting rate in rape cases dropped to 86.6 per cent in 2017 from 95.4 per cent in 2013, the NCRB statistics show.

From the fringes

In the midst of all this a mother, caught by the horror of her son being convicted in the gang-rape, is desperate hope he is spared the noose. Her son Vinay Sharma is one of the four men along with Mukesh Singh, Pawan Gupta and Akshay Kumar Singh awaiting execution in the case. [Four of the six men lived in Ravidas Camp, the seamy underbelly of posh RK Puram in south Delhi, where that night of December 16, 2012 is replayed over and over again.](#) The years of visits to the courts, to the jail to meet her son, still in his 20s, the unrelenting media interest and the burden of guilt have taken their toll on the mother. "Call me Vinay Sharma's mother. You people know everything, there is nothing else to say. Nobody wants to take our plea to the authorities, you can write whatever you want, it wouldn't matter," she told PTI from behind a flimsy iron door to her home.

Struggling with failing health, the woman in her 50s, said no one came to help her when her daughter was in hospital. "Now people are coming and asking how we are doing, where were all of you when my daughter was critically ill in Safdarjung hospital? I am too sick to talk now. I have just returned from the doctor. I don't know what to tell you, if you think I am like your mother you would write something to help us," she said.

Talking in whispers, the neighbours said they don't want outsiders to "give more pain" to the family of the convicts. As the media thronged the colony a day before another December 16 rolls in, the

neighbours said the family of five is supported by Sharma's father, who works at the airport. The family of Pawan Gupta sells fruits to make a living and refused to talk. But there were others who recalled the days before their colony became synonymous with notoriety and crime. One teenage girl remembered "Pawan and Vinay bhaiya" to be helpful and "normal". "We used to sit here till late talking and laughing. Who could have thought they could do such a thing? But our heart goes out to their families. What's their fault? Why should they go through so much suffering?" she asked.

-Inputs from PTI

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